

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California-American Water Company for Authority Pursuant to Public Utilities Code Section 454 to Restructure and Consolidate its Rates for its Monterey and Felton Districts.

Application 04-08-012
(Filed August 11, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING FINDING FELTON FLOW
ELIGIBLE TO CLAIM INTERVENOR COMPENSATION**

This ruling finds Felton FLOW (FLOW) eligible for an intervenor compensation award pursuant to Public Utilities Code Section 1801 *et seq.*

Intervenor Compensation Requirements

The intervenor compensation program set forth in Section 1801 *et seq.*¹ allows public utility customers to receive compensation for their participation in Commission proceedings. To receive an award, a customer must make a substantial contribution to the adoption of the Commission's order or decision and demonstrate that participation without an award would impose a significant financial hardship.²

Section 1804 requires a customer who intends to seek an award to file and serve a notice of intent to claim intervenor compensation (NOI) within 30 days

¹ All references are to the Public Utilities Code.

² Section 1803.

after the prehearing conference. The NOI must include a statement of the nature and extent of the customer's planned participation, and an itemized estimate of the compensation the customer expects to request. The customer's showing of significant financial hardship may be included with the NOI or may be included with the request for award after the Commission's final decision in the proceeding.

If, as in this instance, the NOI includes the customer's financial hardship showing, the Administrative Law Judge (ALJ) in consultation with the Assigned Commissioner must issue within 30 days a preliminary ruling addressing whether the customer will be eligible for an award under the intervenor compensation program.³ To determine eligibility, two questions must be addressed: whether the intervenor is a "customer" as defined in Section 1802(b), and whether participation will present a significant financial hardship.⁴ The ALJ's ruling should also identify which type of customer the intervenor is: a participant representing consumers, customers or subscribers; a representative authorized by a customer; or a representative of a group or organization authorized by its bylaws or articles of incorporation to represent the interests of residential customers. A finding of significant financial hardship creates a rebuttable presumption of eligibility in other Commission proceedings commencing within one year of the date of that finding.

³ Section 1804(b)(1).

⁴ Decision (D.) 98-04-059.

FLOW's NOI

A prehearing conference was held in this proceeding on September 20, 2004, and FLOW filed its NOI on October 20. FLOW's filing was timely. FLOW is an unincorporated association formed to advance the interests of Felton residents and ratepayers in ensuring clean, affordable water utility service in the community. Its initial NOI filing lacked either articles or incorporation or bylaws that would demonstrate that it is authorized to represent the interests of residential customers, but instead included a request that it be allowed additional time to pass bylaws if they were essential to finding it eligible. The ALJ granted FLOW's request and allowed it to supplement the NOI if it did so not later than December 8, 2004, the date its prepared testimony was due. FLOW did file a supplement to its NOI on that date.

FLOW has included a statement of the nature and extent of its planned participation, and an itemized estimate of the compensation it expects to request.

CalAm's Opposition

Under Section 1804(a)(2)(C), "Within 15 days after service of the notice of intent to claim compensation, the administrative law judge may direct the staff, and may permit any other interested party, to file a statement responding to the notice." With the ALJ's permission, California American Water Company (CalAm) filed a statement on November 4 opposing FLOW's NOI, and FLOW thereafter filed a reply to CalAm's response as permitted under the Commission's Rules of Practice and Procedure, Rule 76.75.

In its response, CalAm maintained that FLOW was not a "customer" under the statute because at the time the NOI was filed it lacked either bylaws or articles of incorporation authorizing it to represent the interest of customers. In its supplement filed December 8th, FLOW attached a copy of bylaws enacted on December 5, 2004. Those bylaws state,

Felton FLOW shall have the authority to represent the interests of residential ratepayers of CalAm in the Felton district in all state and local proceedings related to CalAm's ownership, operation, maintenance, rates and service in its Felton District, including all proceedings before the California Public Utilities Commission.

Further, according to its supplemental NOI, FLOW's members are all residential ratepayers in the Felton District. FLOW is indeed an organization authorized to represent the interests of residential customers, and thus is a customer of the third type as defined in Section 1802(b).

To be eligible for compensation as a customer of the third type, the financial hardship test requires the economic interest of FLOW's individual members be small in comparison to the costs of effective participation. CalAm maintains that FLOW has not shown that its participation without compensation would be a significant financial hardship. According to FLOW, the proceeding's maximum effect on individual customers, its members, could be as high as \$250 per year, and that amount would be small compared to its \$32,740 estimate to participate effectively. CalAm argues that, accepting those figures, if all 1311 customer in the Felton District were to contribute \$25 each, they could cover the \$32,740 cost, and \$25 per household is small compared to a potential \$250 per household gain. Section 1801.3(b) provides, "The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process." It would be unrealistic to apply a financial hardship test that assumes that all, or nearly all, Felton District customers are FLOW members and would be contributors. Very few intervenors in Commission general rate case and other proceedings would ever be found eligible to claim compensation as customers of the third type if the Commission were to apply CalAm's suggested standard. As Section 1801.3(b) requires, this ruling accepts FLOW's as the more reasonable

method for determining financial hardship. The benefits for FLOW's individual members are indeed small in comparison to the \$30,000-plus cost of participation. FLOW meets the significant financial hardship test.

FLOW's NOI states that it plans to submit testimony, to participate in evidentiary hearings, and to object to any proposed settlement that it finds objectionable. FLOW says its testimony will be intended to show that CalAm's consolidation proposal will worsen service to Felton water customers, and that there is a better alternative to CalAm's consolidation proposal. CalAm argues that FLOW cannot make a substantial contribution to the proceeding because those points are, respectively, irrelevant or beyond the Commission's jurisdiction to consider. Notwithstanding CalAm's incomplete, misleading quotations from the ALJ's statements at the prehearing conference, evidence and arguments that service may be made better or worse by the proposed consolidation may be relevant to the issues to be decided. Regarding the second point, CalAm is correct that the Commission lacks jurisdiction to order a public entity to acquire the Felton district. However, FLOW's NOI does not indicate it will seek such an order; rather it will presumably attempt to show that consolidation with a contiguous district is a likely and better alternative that would be made more difficult or uneconomic if CalAm's proposal were adopted. CalAm has not shown that FLOW cannot make a substantial contribution.

CalAm also argues that FLOW's itemized expense estimate is unreasonable because it has not documented that it is based on market rates paid to persons of comparable training and experience who offer similar services or that it has excluded items such as public relations or public outreach, and that it has used excessive estimates of travel and parking expenses. CalAm also argues that an award of compensation at the level FLOW estimates would be burdensome to Felton customers. However, a finding of eligibility to claim

compensation in no way assures FLOW will subsequently receive an award, or that the award will be based on amounts set forth in its NOI. The determination of what compensation, if any, FLOW should be granted will come only when FLOW has filed its request pursuant to Section 1804(c) after the issuance of the final order in this proceeding.

Conclusion

After consulting with the Assigned Commissioner, I find that FLOW has met the NOI filing requirements of Section 1804(a) and should be eligible for an award under the intervenor compensation program.

IT IS RULED that:

1. Felton FLOW (FLOW) has filed a timely notice of intent to claim compensation that, as supplemented, meets the applicable requirements under Public Utilities Code Section 1804(a).
2. FLOW is a group or organization authorized by its bylaws to represent the interests of residential customers, and meets the definition of “customer” set forth in Section 1802(b).
3. FLOW has shown that its participation in this proceeding without an award of fees or costs would impose a significant financial hardship. Thus, FLOW will enjoy a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing between December 15, 2004 and December 15, 2005.
4. FLOW is eligible for an award of compensation in this proceeding. This finding of eligibility in no way assures FLOW will be awarded compensation.

Dated December 15, 2004, at San Francisco, California.

/s/ JAMES C. MCVICAR

James C. McVicar
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Finding Felton FLOW Eligible to Claim Intervenor Compensation on all parties of record in this proceeding or their attorneys of record.

Dated December 15, 2014, at San Francisco, California.

/s/ ERLINDA A. PULMANO
Erlinda A. Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.